

Service Date: November 7, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	UTILITY DIVISION
of US West Communications to)	
Introduce A Deregulated Billing)	DOCKET NO. 94.3.11
and Collection Service termed)	
Air Time Message Bill Processing)	(Docket No. N-93-121)
and Inquiry or "Calling)	
Party Pays.")	ORDER NO. 5833b

FINAL ORDER

PROCEDURAL BACKGROUND

1. On November 29, 1993 U S WEST Communications, Inc. (USWC) informed the Montana Public Service Commission (PSC or Commission) that it intended to offer Air Time Message Bill Processing and Inquiry, also known as Calling Party Pays (CPP), as a deregulated service. In response to the Commission's January 31, 1994 notice to interested parties, the Montana Consumer Counsel (MCC) filed comments and requested a hearing. The Commission scheduled a hearing to take place on June 27, 1995.

2. On June 12, 1995 USWC and MCC filed a combined motion with the Commission to vacate the hearing and to decide the matter on a stipulated record. Commission Order No. 5833a dated June 23, 1995 vacated the remainder of the procedural schedule in this docket, established a record for deciding the issues, and ordered USWC and MCC to address the issues in opening briefs to be submitted by June 30, 1995 and answer briefs by July 14, 1995.

STATEMENT OF THE ISSUES

3. The issues in this docket are as follows:

- (a) Whether the Commission has jurisdiction over CPP.
- (b) Whether CPP is in the public interest.

4. The record by which we decide the substantive issue in this docket consists of the prefiled testimony of Peggy A. Nownes,

a witness on behalf of USWC, and USWC's responses to data requests from the MCC and from PSC staff. While not a source of technical evidentiary information, the briefs contain a relevant summary of each party's policy concerns as well as their jurisdictional arguments. No factual questions are involved in this docket.

BACKGROUND AND EXPLANATION OF CPP

5. USWC offers billing and collection services to interexchange carriers (IXCs) on a deregulated basis for both intrastate and interstate toll charges incurred by USWC's local exchange customer end users. USWC wishes to offer CPP as a billing and collection service to cellular carriers.

6. Presently, when a call originates from the cellular customer or a landline customer, cellular customers of the cellular carrier are charged for air time minutes of use. The cellular customer pays for all calls, regardless of origination. CPP involves a shifting of air time charges, at the option of the cellular customer, to the USWC land line customer placing a call to a cellular unit. When a cellular carrier has subscribed to CPP, the option to shift the charges is the decision of the cellular carrier's customers. The change associated with CPP service is best described by contrasting how cellular providers currently, and subsequently, charge for calls between their cellular customers and USWC's land line customers.

7. In contrast, if a cellular provider subscribes to USWC's proposed CPP service and its cellular customer chooses CPP, USWC's land line customer placing a call to that cellular customer will bear the cost for air time minutes of use. Cellular customers will continue to pay for air time for calls they originate to USWC's land line customers. The individual cellular customer makes the choice to shift the charge to land line callers originating the calls, not the cellular carrier who subscribes to the billing and collection service offered by USWC. When a cellular carrier subscribes to CPP, all the cellular carrier's customers are not required to have CPP.

8. Air time charges shifted to the USWC land line customer may be for local calls or USWC intraLATA long distance calls. It

is unclear from the record whether an intraLATA call transported by an IXC will trigger the air time billing to the land line user. However, the testimony of Peggy A. Nownes, describing an interLATA call, implies that it is the nature of the transport of the call that determines this. She stated that "[n]o cellular airtime message is charged [to the landline user] due to the call being transported by an interexchange carrier." Testimony of Peggy A. Nownes, at p. 4.

9. To place a local call presently, the land line caller dials only the seven-digit number of the cellular customer. With CPP, the land line caller must dial 1+ the seven-digit number of the cellular customer. The seven-digit number includes a special prefix assigned to the cellular carrier for use with CPP customers.

Land line users originating calls from pay telephones and from non-USWC Montana exchanges will not be billed for air time by USWC.

Air time charges are also not shifted for interLATA intrastate calls transported by IXCs. With CPP, the cellular customer remains responsible for air time minutes on such calls, except in the case of a call placed from the territory of another local exchange carrier with CPP in effect.

10. Prior to implementation of CPP, USWC proposes to conduct an informational campaign using billing inserts to educate its subscribers about CPP. The bill inserts would state that air time charges may be incurred if land line callers originate a cellular communication. USWC also proposes to include explanatory information in its white pages of future telephone directories.

COMMISSION DECISIONJurisdiction

11. In its notice dated January 31, 1994, *inter alia*, the Commission invited comments from interested parties on the question whether CPP constitutes a regulated telecommunications service in Montana or is otherwise subject to PSC regulatory jurisdiction. USWC argues that CPP is not a regulated telecommunications service nor otherwise subject to PSC jurisdiction. MCC contends that the Commission should assume it has jurisdiction over CPP.

12. According to USWC, the Commission has no jurisdiction over CPP because neither the cellular air time charges which are billed under CPP nor the billing and collection services which USWC will provide are the subject of PSC regulation.

13. USWC is correct that the air time charges are not regulated. Air time charges are an element of cellular communications and cellular communications are expressly excluded from the definition of "regulated telecommunications service" set forth in ' 69-3-101(1)(f), MCA. In addition, the actual billing and collection service provided to IXCs by USWC is also generally deregulated. See *Petition by Mountain States Tel. & Tel. Co. to Deregulate Special Access Services, Special Federal Government Access Services and Billing and Collections*, PSC Docket No. 86.8.47, Order No. 5223 (9/24/86); and *In the Matter of Detariffing of Billing and Collection Services*, CC Docket No. 85-88 (FCC, 1/14/85).

14. MCC points out, however, that although the Commission has recognized that billing and collection services for IXCs have been deregulated, it continues to assert jurisdiction over billing for a local exchange carrier's own services and billing practices when billing end users for interexchange services. Order No. 5223 states as follows:

16. Billing and collections is offered by a local exchange carrier to interexchange carriers only. The MPSC continues to assert jurisdiction over the billing and collection of a carrier's own communications offering because this service is clearly incidental to

the offering of a switched service. The MPSC also continues to assert jurisdiction over Mountain Bell's billing practices when billing end users for AT&T services.

Thus, under Montana law only two-way switched voice-grade telecommunications services and services incidental to switched services are subject to regulation. The conclusion arrived at by this Commission in Order No. 5223 in regard to billing and collections was based on billing and collection services offered by a local exchange carrier to IXC's only. It did not contemplate a billing and collection service such as is the subject of this docket.

15. USWC asks the Commission to not distinguish the billing and collection service for cellular providers from that which it presently provides to IXC's. There is a major difference, however.

As emphasized by the MCC, CPP is a service which USWC or other local exchange carriers can provide to cellular companies and which cellular companies cannot obtain from anyone else. In today's telecommunications market in Montana, there are no competitive local exchange companies providing access between the land line customer and the cellular customer in USWC territories. USWC is able to provide this service because it controls the local exchange switching required to connect the cellular wireline customers to land line end users and because it has a customer base of all end users with which to combine billing and collection for regulated and unregulated services.

16. Therefore, part of the CPP service is a regulated component totally controlled by a local exchange company which precludes competition by hypothetical other companies providing billing and collections services. Although CPP is not two-way switched voice-grade access and transport, it is incidental to such access and transport, and thus subject to regulation by the Commission. Moreover, unlike interexchange toll, the record contains no evidence of a competitive market for this service. When a service contains both deregulated and regulated components, the service will be regulated. *Petition of Ronan Tel. Co. to*

Deregulate Foreign Exchange Serv., Docket No. 90.11.81, Order No. 5603, Finding of Fact 8 (1/21/92).

17. Furthermore, billing practices are not deregulated. Issues relating to billing practices for cellular air time may surface which must be addressed by the PSC as USWC will bill air time on a separate page included with its monthly statement to its own customers. USWC's land line customers are clearly impacted by CPP in addition to cellular companies and their customers. CPP involves a billing practice of actually shifting costs for air time to USWC regulated customers.

Public Interest

18. USWC argues that if the PSC has jurisdiction in this matter, CPP should be approved because it is in the public interest. USWC asserts that CPP is an optional billing and collection service offered to cellular carriers and that it is not a service provided to land line customers. Nonetheless, its primary impact is on USWC's own land line customers who will bear costs for air time minutes of use for which they do not now pay.

19. USWC contends that this concern is addressed by its proposed notification procedures which will adequately inform its land line customers about the change in billing air time. It proposes to describe CPP in a bill insert one month prior to implementation. USWC further asserts that land line customers will be alerted to the billing change because they will have to dial 1+ a seven-digit number (with a special prefix) to reach a cellular customer and this will alert the caller that charges will apply to the call. USWC also intends to include information about cellular carriers and CPP in its future telephone directories.

20. The MCC contends that CPP is unduly discriminatory for two reasons. First, CPP shifts costs to USWC land line subscribers without any related benefits. Second, only USWC land line subscribers pay the cellular provider's air-time charges. USWC subscribers making interLATA long distance and pay telephone calls to cellular phones are not assessed air time charges.

21. The MCC further argues that USWC's proposed notification measures will not adequately notify land line subscribers about the charges they may incur when calling cellular phones. To address this concern, the MCC contends that approval of CPP should be conditioned upon USWC requiring a provision in its contracts with cellular providers that would require information disclosure about the cost of air time before the land line caller incurs any charges. Finally, MCC believes that if CPP is approved it should be for a limited time.

Discriminatory Nature of CPP

22. Most of USWC's customers presently subscribe to lines which allow them unlimited local calling for a flat rate. The CPP costs shifted to USWC land line customers will often be assessed on local calls, although CPP may apply to intraLATA toll calls as well. However, the calling party will not always pay when making a local call to a cellular phone. Only those calls placed to cellular customers who have subscribed to CPP with their cellular carrier will trigger the charge. Calls made from pay telephones are not affected by CPP nor are calls in non-USWC exchanges whose local exchange company does not offer CPP to cellular carriers. CPP applies to USWC intraLATA toll calls; interLATA calls transported by interexchange carriers are not affected. It is unclear from the record whether callers placing their intraLATA calls through an IXC will be billed for air time. Thus, some callers making intraLATA toll calls may be billed both toll charges and air time while others may be charged for only a toll call as is the case with interLATA toll calls.

23. The MCC contends that CPP discriminates against USWC land line customers because it appears to shift costs to land line customers with no identifiable associated benefits. In addition to cost shifting, the MCC states that CPP appears to discriminate among similarly situated landline callers placing calls to a cellular phone. Callers using pay telephones are not charged for air time nor are those placing intraLATA calls from outside USWC's service territory.

24. The MCC notes that USWC has emphasized the benefits to USWC in the form of additional revenues and to cellular customers by lowering their overall costs of cellular communication, yet conspicuously absent in its arguments is any reference to the effect of the service on its own land line customers. There are no benefits to the land line caller other than the possible benefit to all parties from increased usage of the telecommunications network and potential increase in number of cellular customers. USWC's land line customers will incur costs to communicate with cellular customers for which they have previously never been required to pay.

25. MCC's observations concerning the discriminatory nature of CPP are relevant and well-taken and conceded to by USWC in its Answer Brief in the case of a pay phone call or a call requiring interLATA transport by an IXC. The Commission does not agree, however, that CPP is discriminatory in the case of a call originating from non-USWC territory; such a call may also result in the calling party being charged for air time by another local exchange carrier. It may be discriminatory, however, in the case of an intraLATA call transported by an IXC and is discriminatory for intrastate interLATA calls.

26. As USWC points out, however, not all discrimination is prohibited. USWC contends that USWC's land line customers are "steeped in the tradition of Calling Party Pays" because they are used to being charged a toll call when they dial 1+ a number. It argues that CPP is like any other call made by dialing 1+ a number because toll services accessed by dialing 1+ a number are generally billed to the calling party. The Commission does not agree that CPP air time charges are similar to toll charges. In fact, both may apply on a single call and appear on different pages of USWC's billing statement when CPP applies. CPP charges for air time are unique in character and differ substantially from toll charges.

27. Cellular communication is one of the fastest, if not the fastest growing means of communication. It and other wireless

forms of communication offer a potential for telecommunications services which we can only speculate about today.

28. USWC argues that increased demand for cellular communication will be met by allowing the option of having the originator of the charges pay for air time. Although we have not been shown that increased demand for cellular communication can be met in this manner, the Commission believes it is in the public interest not to inhibit the full development of new telecommunications services.

29. The Commission further concludes that it is presently in the public interest to approve CPP. However, because the concerns expressed by the MCC about the discriminatory nature of CPP to the land line caller have merit, and because there is the potential for many complaints, the Commission approves CPP for a period of one year.

Adequacy of Notification

30. The Commission agrees with USWC that presently land line callers often have special relationships with cellular customers. They may also, as USWC contends, generally have to make special arrangements to get the cellular numbers and may have a good understanding of the air time charges they will incur. Although this may in fact be true, the evolving nature of wireless communications does not support a conclusion that cellular communication will remain limited to this present group of astute users.

31. According to the arguments espoused by USWC in its briefs, the opposite result may well occur. USWC has argued that CPP will encourage increased use of cellular communication. Increase in use, however, has the potential to include many land line callers who are not familiar with air time charges. With the increasing use of cellular communication for many purposes, there is a much greater potential for the unwary land line caller to unwittingly incur substantial charges for air time. Thus, it is imperative that adequate notification be given to all USWC land line customers.

32. The Commission shares many of the MCC's concerns about adequate notification to land line callers. A major concern is that, even if they know they will incur some costs, such callers will have no way to determine the cost of cellular air time per minute of use. The MCC contends that adequate notice to the land line caller includes a message that air time charges will be incurred and a means of determining the amount of the charge. The MCC is concerned about the similarity between charges for CPP and those for calls placed through Alternative Operator Service Providers (OSPs). This and other state commissions and the FCC have received numerous complaints about exorbitant costs incurred by callers placing calls through OSPs. This concern for notification about air time costs assumes that CPP is similar to toll. We have stated above that it is in fact very different from toll and unique in nature.

33. USWC has stated its policy is to make adjustments on a first-time basis for callers who are billed for air time they did not know they would incur. The Commission encourages USWC to continue this policy throughout the one-year period covered by this order.

34. The Commission finds that USWC's proposed notification is acceptable. Although the Commission is not requiring branding (disclosure) on calls, because continued Commission approval of CPP may rest on the number of complaints about the service, it may be in the cellular carrier's best interest to brand calls.

35. The Commission rejects MCC's proposed interim approval of CPP. The point of an interim approval is to allow a reasonable time for customers to experience the policy change. This can be accomplished by approving the service for a period of one year. Although any length of time is arbitrary, the Commission approves CPP for one year from the date of this order.

Disconnection of Local Service

36. Existing billing and collection regulations do not allow disconnection of local service for nonpayment of IXC toll charges. CPP calls may be predominantly local in nature. Thus, the

Commission does not consider it in the public interest for cellular air time charges to be considered in any manner when terminating regulated local service for nonpayment. USWC may not disconnect any land line customer for nonpayment of local cellular air time charges and such charges may not be considered in making decisions to terminate service for other reasons.

Tariff and Data Response Consistency

37. The Commission notes an apparent inconsistency between the statement in Tab A-20 of USWC's access tariff and USWC's Response to PSC-015(a) in this Docket. As referenced in PSC-015, USWC does use A-20 to interconnect with Cellular Providers.

CONCLUSIONS OF LAW

1. USWC furnishes regulated telecommunications services to consumers in Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. Section 69-3-101, MCA.

2. The PSC has primary jurisdiction to determine if a service offered by a public utility is regulated under the laws of the State of Montana.

3. The provision of two-way switched voice-grade telecommunications services and those services incidental to the provision of two-way switched voice-grade services constitute "regulated telecommunications services" subject to the regulatory jurisdiction of the Montana Public Service Commission. Sections 69-3-101 and 69-3-803, MCA.

4. Billing and collections services offered to interexchange carriers are not regulated services. USWC's billing practices relating to such services are subject to PSC regulation. Calling Party Pays is offered incidental to a switched service and is thus subject to regulation by the Commission, pursuant to ' ' 69-3-803(3) and -807, MCA.

5. The PSC has provided adequate public notice of all proceedings in this docket and an opportunity to be heard to all interested parties concerning USWC's informational notice to the

Commission of its intent to offer Air Time Message Bill Processing and Inquiry as a deregulated service. Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

1. USWC is authorized to offer Air Time Message Bill Processing and Inquiry as a regulated service for a period of one year from the date of this order.

2. USWC is ordered to take the following measures to notify its customers of the new offering:

- a. At least 30 days prior to offering the service, notify its customers by means of bill inserts that they may be charged for air time minutes of use and explain the service.
- b. Include information in future directories to inform customers about CPP.
- c. Require its service representatives to assist in educating customers about CPP and provide information upon request for its customers to contact a representative of the cellular carrier to determine the cost of air time minutes.

3. USWC is ordered to keep a record of all complaints and adjustments made for air time charges for the one-year period covered by this order. This record is to be provided to the Commission within 60 days following the expiration of the one-year period.

Done and dated this 31st day of October, 1995 by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner
(Voting to Dissent, Attached)

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

DISSENT OF COMMISSIONER ROWE
USWC DOCKET NO. 94.3.11, ORDER NO. 5833b

I dissent from the Commission's decision to approve Calling Party Pays with only minimal protection for the customers who will pick up the tab. Customers are best able to make informed decisions about whether to complete a particular transaction if they are provided accurate price information at the time they make their decision. Further, information provided at other than the point of decision should be made available on a recurring basis.¹

One-time bill inserts and information in phone directories are appropriate but are by themselves completely inadequate. Bill inserts are one-time measures. Both bill inserts and directory information are unlikely to come to the customer's attention at the time she makes her decision, if they come to her attention at all.

¹ The Order presents in many respects a reasoned explanation of why the measures the Commission approves are inadequate to address the problems it so well describes. The majority is appropriately reluctant to "inhibit the full development of new telecommunications services." (Paragraph 28) However, the majority fails to explain how providing customers better information inhibits the deployment of services those customers want.

Neither is a substitute for accurate information at the time of decision.

"branding" calls with a disclosure to the customer who will pay the charge before the call is completed allows the customer to make a rational decision about whether and how much to consume. Telephony, open- and closed-end consumer loans and other areas provide many examples of how failure to provide such information causes consumer complaints and hinders the market's ability to effectively control price.²

²

For example, a major study of Truth in Lending implementation concluded that customers who received periodic disclosure of their open-end credit transactions were more aware of annual percentage rates than were those who received one-time or infrequent disclosure for closed-end loans. National Commission on Consumer Finance, Consumer Credit in the United States 175-179 (1972).

U S West charges flat rates for local service. These rates are regulated. Cellular providers charge usage-sensitive rates.³

Cellular phone rates are unregulated. To the extent cellular rates are constrained, it is by the decision of cellular phone customers to purchase a particular service, or to increase or decrease consumption. Calling Party Pays shifts the cost of the call from the cellular customer to the customer using a traditional land line to call the cellular customer. The primary impact of the service is therefore on customers of regulated U S West services, who are using two-way switched, voice-grade service.⁴ The party with the greatest theoretical ability to influence price (the cellular customer) is not the one who bears the cost.

Cellular phone rates tend to be significantly higher than do long distance rates. Without point-of-decision disclosure, the calling party will expect to pay rates which would be at most equivalent to long distance. Experience with other phone services which charge significantly higher prices demonstrates that many customers feel misled or even victimized when they receive bills substantially higher than expected.⁵ The Commission's action now

³ This raises an issue of reciprocal cost-based pricing. Cellular providers would have U S West charge land-line callers usage-sensitive rates they would otherwise charge cellular customers. However, cellular customers apparently would not pay all usage-sensitive costs caused by calls to its own land-line customers. Reciprocity questions will recur as new services provided to niche markets require connection to the ubiquitous network.

⁴ Significantly, Calling Party Pays is a service valuable to cellular providers primarily because U S West still enjoys an effective monopoly for local service. No one else both controls a local switch and offers ubiquitous access to every phone owner in a local area.

⁵ For example, the Commission has received 9 rate complaints about inmate phone services and 11 rate complaints about operator service providers so far in 1995.

ensures this experience will be unnecessarily repeated with Calling Party Pays.

The Order does not explicitly state why branding should not be required, instead asserting that U S West's proposed notification is "acceptable" (paragraph 34). In pre-filed testimony, U S West asserted that converting central offices would be cost-prohibitive (Nownes, p. 7). However, no cost information was provided and the assertion was never adequately examined. In deliberations, I suggested a workshop to consider ways to provide branding information efficiently, and to consider ways to provide information more effectively than those proposed by U S West and approved by the Commission. During the period this order is in effect, I strongly encourage U S West, the Montana Consumer Counsel and the Commission to undertake such an effort.

RESPECTFULLY SUBMITTED this 7th day of November, 1995.

BOB ROWE, Commissioner